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| HOFFMAN WARNICK LLC | | | EXAMINER | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/047,307

Applicant(s)

MURPHY ET AL.

Examiner

JENNIFER LIVERSEGE

Art Unit

3692

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

This Office Action is responsive to Applicant's amendment and reconsideration of Application 10/047,307 filed on November 5, 2008.

The amendment contains original claims: 4, 6-7, 11, 13-15, 18-21 and 23-26.

The amendment contains previously presented claims: 2, 5 and 12.

The amendment contains amended claims: 1, 3, 8-10, 17 and 22.

Claim 16 has been canceled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 22 recites a program product stored on a recordable medium...which when executed comprises...program code. It is unclear as to the grammatical flow in the claim language. Typically, when program code is executed, the result is an action and not further code. It would seem that the program code configured to carry out various steps would already be a part of the software, and would not be contingent on execution. For purposes of examination, examiner will assume that it is meant that the program code is executed to perform the steps as recited in the limitations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 6-7, 10-13 and 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 7,287,009 B1 to Liebermann (further referred to as Liebermann), in view of "Pagers Infiltrating" by Andy Pargh (further referred to as Pargh), and further in view of Official Notice.

Regarding claim 1, Liebermann discloses a method for receiving an alert in a commercial transaction (columns 4-27), comprising the steps of:

Using a transactional device used for making payment in a commercial transaction (column 10, lines 8-10 and lines 47-49; column 17, lines 54-65; column 18, lines 16-19); and

Receiving an alert attached to transaction data for the commercial transaction indicating receipt of a message personally directed from a third party sender that is not involved in the commercial transaction to a user of the transactional device, the contents of the message being independent from the commercial transaction (column 4, lines 60-67; column 5, lines 56-67; column 17, lines 54-65; column 18, lines 6-19).

Liebermann does not specifically disclose an alert code. However, Pargh discloses an alert code (page 1, paragraphs 3-4; page 2, paragraphs 1-2). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the providing of an alert attached to transaction data notifying a customer using a credit card at a POS that a personal message unrelated to the transaction is awaiting him/her as disclosed by Lieberman to adapt the use of alert codes as disclosed by Pargh. The motivation would be that Lieberman discloses providing an indication of an awaiting message, not the message itself, and therefore some sort of coding is being used to represent the message and notify the user of an awaiting message. The use of alert codes provides for an efficient and effective means of information transfer.

Neither Liebermann nor Pargh disclose alerting a transaction clerk regarding the existence of a message via an audible signal. However, Liebermann discloses where a user of a credit card is alerted that a message is awaiting him/her by use of a POS device. Examiner takes Official Notice that it is old and well known and would have been obvious to one of ordinary skill in the art at the time of the invention that the clerk would be alerted to the awaiting message using auditory means. This is because clerks generally operate the POS transaction devices in terms of receiving credit card

authorizations and as the transaction data is sent to the POS device in order for a clerk to be made aware as to whether the pending purchase has been authorized or not, it would then be obvious that any other data accompanying the transaction data would be made available to the clerk during that transaction process and providing auditory queues are common for catching someone's attention. For example, and as support for the Official Notice taken, US Patent 6,783,065 B2 to Spitz et al. discloses sending audible messages and codes to a merchant as part of authorizing transactions at column 4, line 60 – column 5, line 7 and Templeton further discloses sending audible messages to merchants as part of the authorization process at column 11, lines 35-42; column 14, lines 47-59; column 30, lines 12-18.

Regarding claim 10, Lieberman discloses a method for receiving an alert in a commercial transaction (columns 4-27), comprising the steps of:

Contacting a message center with a message from a third party sender that is not involved in the commercial transaction (column 18, lines 6-8);

Using a transaction device in a commercial transaction (column 10, lines 8-10 and lines 47-49; column 17, lines 54-65; column 18, lines 16-19);

Identifying an intended recipient of the message (column 18, lines 9-11);

Attaching an alert to transaction data for the transaction, wherein the alert is unrelated to the transaction (column 4, lines 60-67; column 17, lines 54-65; column 18, lines 16-19);

Receiving the alert attached to the transaction data (column 4, lines 60-67; column 17, lines 54-65; column 18, lines 16-19); and

Retrieving the message in response to the received alert (column 15, lines 4-8; column 17, lines 54-65; column 18, lines 16-19; column 20, lines 30-37).

Liebermann does not specifically disclose an alert code. However, Pargh discloses an alert code (page 1, paragraphs 3-4; page 2, paragraphs 1-2). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the providing of an alert attached to transaction data notifying a customer using a credit card at a POS that a personal message unrelated to the transaction is awaiting him/her as disclosed by Lieberman to adapt the use of alert codes as disclosed by Pargh. The motivation would be that Lieberman discloses providing an indication of an awaiting message, not the message itself, and therefore some sort of coding is being used to represent the message and notify the user of an awaiting message. The use of alert codes provides for an efficient and effective means of information transfer.

Neither Liebermann nor Pargh disclose alerting a transaction clerk regarding the existence of a message via an audible signal. However, Liebermann discloses where a user of a credit card is alerted that a message is awaiting him/her by use of a POS device. Examiner takes Official Notice that it is old and well known and would have been obvious to one of ordinary skill in the art at the time of the invention that the clerk would be alerted to the awaiting message using auditory means. This is because clerks generally operate the POS transaction devices in terms of receiving credit card authorizations and as the transaction data is sent to the POS device in order for a clerk

to be made aware as to whether the pending purchase has been authorized or not, it would then be obvious that any other data accompanying the transaction data would be made available to the clerk during that transaction process and providing auditory queues are common for catching someone's attention. For example, and as support for the Official Notice taken, US Patent 6,783,065 B2 to Spitz et al. discloses sending audible messages and codes to a merchant as part of authorizing transactions at column 4, line 60 – column 5, line 7 and Templeton further discloses sending audible messages to merchants as part of the authorization process at column 11, lines 35-42; column 14, lines 47-59; column 30, lines 12-18.

Regarding claim 17, Lieberman discloses a system for receiving an alert in a commercial transaction (columns 4-27), comprising:

A message reception system for receiving a message from a third party sender that is not involved in the commercial transaction (column 6, lines 59-64; column 18, lines 6-8);

A recipient identification system for identifying an intended recipient of the message based upon use of a transactional device during a commercial transaction (column 8, lines 15-32; column 14, lines 40-50; column 17, lines 54-65; column 18, lines 9-11; column 19, lines 4-14);

An attachment system for attaching an alert to transaction data for the transaction (column 4, lines 60-67; column 17, lines 54-65; column 18, lines 16-19); and

A message transmission system for transmitting the received messages (column 4, lines 60-67; column 17, lines 54-65; column 18, lines 16-19).

Liebermann does not specifically disclose an alert code. However, Pargh discloses an alert code (page 1, paragraphs 3-4; page 2, paragraphs 1-2). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the providing of an alert attached to transaction data notifying a customer using a credit card at a POS that a personal message unrelated to the transaction is awaiting him/her as disclosed by Lieberman to adapt the use of alert codes as disclosed by Pargh. The motivation would be that Lieberman discloses providing an indication of an awaiting message, not the message itself, and therefore some sort of coding is being used to represent the message and notify the user of an awaiting message. The use of alert codes provides for an efficient and effective means of information transfer.

Neither Liebermann nor Pargh disclose alerting a transaction clerk regarding the existence of a message via an audible signal. However, Liebermann discloses where a user of a credit card is alerted that a message is awaiting him/her by use of a POS device. Examiner takes Official Notice that it is old and well known and would have been obvious to one of ordinary skill in the art at the time of the invention that the clerk would be alerted to the awaiting message using auditory means. This is because clerks generally operate the POS transaction devices in terms of receiving credit card authorizations and as the transaction data is sent to the POS device in order for a clerk to be made aware as to whether the pending purchase has been authorized or not, it would then be obvious that any other data accompanying the transaction data would be

made available to the clerk during that transaction process and providing auditory queues are common for catching someone's attention. For example, and as support for the Official Notice taken, US Patent 6,783,065 B2 to Spitz et al. discloses sending audible messages and codes to a merchant as part of authorizing transactions at column 4, line 60 – column 5, line 7 and Templeton further discloses sending audible messages to merchants as part of the authorization process at column 11, lines 35-42; column 14, lines 47-59; column 30, lines 12-18.

Regarding claim 22, Lieberman discloses a program product stored on recordable medium for receiving an alert in a commercial transaction (columns 4-27), comprising:

Program code configured to receive a message from a third party sender that is not involved in the commercial transaction (column 6, lines 59-64; column 18, lines 6-8);

Program code configured to identify an intended recipient of the message based upon use of a transactional device during a commercial transaction (column 8, lines 15-32; column 14, lines 40-50; column 17, lines 54-65; column 18, lines 9-11; column 19, lines 4-14);

Program code configured to attach an alert to transaction data for the commercial transaction (column 4, lines 60-67; column 17, lines 54-65; column 18, lines 16-19); and

Program code configured to transmit the received messages (column 4, lines 60-67; column 17, lines 54-65; column 18, lines 16-19).

Liebermann does not specifically disclose an alert code. However, Pargh discloses an alert code (page 1, paragraphs 3-4; page 2, paragraphs 1-2). It would be obvious to one of ordinary skill in the art at the time of the invention to modify the providing of an alert attached to transaction data notifying a customer using a credit card at a POS that a personal message unrelated to the transaction is awaiting him/her as disclosed by Lieberman to adapt the use of alert codes as disclosed by Pargh. The motivation would be that Lieberman discloses providing an indication of an awaiting message, not the message itself, and therefore some sort of coding is being used to represent the message and notify the user of an awaiting message. The use of alert codes provides for an efficient and effective means of information transfer.

Neither Liebermann nor Pargh disclose alerting a transaction clerk regarding the existence of a message via an audible signal. However, Liebermann discloses where a user of a credit card is alerted that a message is awaiting him/her by use of a POS device. Examiner takes Official Notice that it is old and well known and would have been obvious to one of ordinary skill in the art at the time of the invention that the clerk would be alerted to the awaiting message using auditory means. This is because clerks generally operate the POS transaction devices in terms of receiving credit card authorizations and as the transaction data is sent to the POS device in order for a clerk to be made aware as to whether the pending purchase has been authorized or not, it would then be obvious that any other data accompanying the transaction data would be made available to the clerk during that transaction process and providing auditory queues are common for catching someone's attention. For example, and as support for

the Official Notice taken, US Patent 6,783,065 B2 to Spitz et al. discloses sending audible messages and codes to a merchant as part of authorizing transactions at column 4, line 60 – column 5, line 7 and Templeton further discloses sending audible messages to merchants as part of the authorization process at column 11, lines 35-42; column 14, lines 47-59; column 30, lines 12-18.

Regarding claim 2, Liebermann discloses:

contacting a message center with the message, prior to the using of the transactional device (column 6, lines 59-64; column 18, lines 6-8); and

receiving a transaction request after the using of the transactional device (column 10, lines 43-58; column 15, lines 4-8; column 17, lines 54-65; column 18, lines 16-19; column 20, lines 30-37).

Regarding claim 6, Liebermann discloses wherein the transactional device is selected from the group consisting of a magnetic device, and a machine-readable code containing device (column 9, lines 27-33).

Regarding claims 7, 20 and 25, Liebermann discloses wherein the alert is unrelated to the commercial transaction (column 4, lines 60-67; column 5, lines 65-67; column 17, lines 54-65; column 18, lines 6-19). The same art and rationale in combining Liebermann and Pargh regarding the alert code as was applied to claims 1, 17 and 22 apply to claims 7, 20 and 25.

Regarding claim 11, Liebermann discloses contacting the message center (column 18, lines 6-8); providing a unique identifier corresponding to the intended recipient (column 18, lines 9-11); and receiving a transaction request after the using of the transactional device (column 15, lines 4-8; column 17, lines 54-65; column 18, lines 16-19; column 20, lines 30-37).

Regarding claim 12, Liebermann discloses wherein the retrieving step comprises retrieving the message from the third party sender (column 27, lines 14-50 where participants communicate via chat). Further Pargh discloses wherein the retrieving step comprises retrieving the message from the third party sender (page 1, paragraphs 2-4; page 2, paragraphs 1-2).

Regarding claim 13, Liebermann discloses wherein the transactional device is a magnetic device (column 9, lines 27-33).

Regarding claim 18, Liebermann discloses wherein the message reception system records the message (column 6, lines 59-64; column 18, lines 6-8), and wherein the message transmission system plays the recorded message (column 15, lines 4-7; column 17, lines 54-65; column 18, lines 11-14; column 20, lines 30-32).

Regarding claim 19, Liebermann discloses wherein the recipient identification system identifies the intended recipient based upon a transaction device identification

(column 9, lines 27-33; column 10, lines 43-53; column 17, lines 54-65; column 18, lines 6-19; column 19, lines 4-14).

Regarding claim 21, Liebermann discloses a subscription system for the intended recipient to subscribe to a message service (column 7, lines 58-60; column 8, lines 15-32).

Regarding claim 23, Liebermann discloses wherein program code configured to receive the message records the message (column 6, lines 59-64; column 18, lines 6-8), and wherein program code configured to transmit the received message plays the recorded message (column 15, lines 4-7; column 17, lines 54-65; column 18, lines 11-14; column 20, lines 30-32).

Regarding claim 24, Liebermann discloses wherein the program code configured to identify the intended recipient identifies the intended recipient based upon a transaction device identification (column 9, lines 27-33; column 10, lines 43-53; column 17, lines 54-65; column 18, lines 6-19; column 19, lines 4-14).

Regarding claim 26, Liebermann discloses program code configured to allow the intended recipient to subscribe to a message service (column 7, lines 58-60; column 8, lines 15-32).

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebermann, Pargh and Official Notice as applied to claim 1 above, and further in view of "Netcard set to debut info kiosk" by Chooi Yew Tzen (further referred to as Tzen).

Regarding claim 3, Lieberman discloses:

attaching an alert to transaction data in response to the transaction request (column 4, lines 60-67; column 17, lines 54-65; column 18, lines 16-19), and to user account data [per 112 interpretation] prior to the receiving of the transaction request (column 17, lines 54-65; column 18, lines 6-8); and

retrieving the message in response to the received alert (column 15, lines 4-8; column 17, lines 54-65; column 18, lines 16-19; column 20, lines 30-37).

The same art and rationale in combining Liebermann and Pargh regarding the alert code as was applied to claim 1 applies to claim 3.

Neither Liebermann nor Pargh specifically disclose sending the alert attached to a transaction code. However, Liebermann discloses sending an alert attached to transaction data (column 4, lines 60-67; column 17, lines 54-65; column 18, lines 16-19). Further, Tzen discloses a receipt with a transaction code for referring to the transaction. It would be obvious to one of ordinary skill in the art at the time of the invention to modify the supplying of alert codes with transaction data as disclosed by Liebermann and Pargh to adapt the use of a transaction code as transaction data. The motivation would be that transaction codes are used to indicate a transaction and are frequently supplied with transaction receipts.

Regarding claim 4, Liebermann discloses wherein the retrieving step comprises: contacting the message center (column 18, lines 11-14); providing a unique identifier (column 6, lines 16-23); and retrieving the message from the message center (column 6, lines 16-23; column 15, lines 4-8; column 17, lines 54-65; column 18, lines 16-19; column 20, lines 30-37).

Regarding claim 5, Liebermann discloses wherein the retrieving step comprises retrieving the message from the third party sender (column 27, lines 14-50 where participants communicate via chat). Further Pargh discloses wherein the retrieving step comprises retrieving the message from the third party sender (page 1, paragraphs 2-4; page 2, paragraphs 1-2).

Claims 8-9 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebermann, Pargh and Official Notice as applied to claims 1 and 10 above, and further in view of case law (*In re Kuhle*, 526 F.2d 553, 188 USPQ7 (CCPA 1975)).

Neither Liebermann nor Pargh disclose wherein the alert code is appended, prepended or embedded to or in transaction data that indicates whether the commercial transaction is approved or declined. However, it would be obvious to one of ordinary skill in the art to place the alert code in either of an appended, prepended or embedded location relative to the transaction data. For example, in the *Kuhle* case, the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice. Applicant has offered no specific reasoning as to why it is

critical that the alert be placed in the appended, prepended or embedded location and Examiner holds that it is therefore obvious to place it in any relative location.

Response to Arguments

Applicant argued examiner's use of Official Notice with respect to claim limitations related to alerting a clerk regarding the existence of a message via an audible signal. However, examiner notes that this is a new limitation and has been addressed in the Office Action set forth above. The previous limitation and related Official Notice had been directed to alerting the clerk to a message without the limitation that the alerting be done via an audible signal. Thus the applicant's are moot based on the new grounds of rejection as necessitated by amendment.

Further, applicant argues the rejection as related to an alert code being appended or prepended to a transaction code. However, the rejection as previously presented stands. As detailed above, case law *In re Kuhle*, 526 F.2d 553, 188 USPQ7 (CCPA 1975) states that the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice. Applicant has offered no specific reasoning as to why it is critical that the alert be placed in the appended, prepended or embedded location and Examiner holds that it is therefore obvious to place it in any relative location. Additionally, as evidence, US2002/0051545 A1 to Ogilvie discloses the appending and prepending of codes for messages (at least paragraph 39).

The final paragraph of arguments appears to be from a previous amendment as it argues prior art not used in the Office Action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Pub 2002/0051545 A1 to Ogilvie cited as an example of the appending and prepending of codes to messages.

US Patent 6,783,065 B2 to Spitz et al. cited as an example of audible messages being sent to merchants.

US Patent 5,679,940 to Templeton et al. cited as an example audible messages being sent to merchants.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jennifer Liversedge whose telephone number is 571-272-3167. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached at 571-272-6702. The fax number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jennifer Liversedge/
Examiner, Art Unit 3692

/Kambiz Abdi/
Supervisory Patent Examiner, Art Unit 3692